

Attorney Docket No.: 930008-2208 (BOE0004US.NP)
Inventors: Klokke et al.
Serial No.: 10/577,569
Filing Date: February 27, 2008
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REMARKS

Claims 32-61 are pending in this application. Claims 58 and 59 have been canceled. No new matter has been added. Applicants respectfully request reconsideration of the restriction requirement in view of the following remarks.

The Examiner acknowledges Applicants' response of October 26, 2009 with an election of the process of making an aqueous dispersion, and species of fatty acid salt as separating agent that floats in pure water, a layer silicate as a separating agent that sinks in pure water and polyacrylate as a film-forming polymer. However, upon reconsideration, the Examiner now considers the scope of species within the genus of polymers recited in claims 32-35 to be broad and has required a further election of species. Specifically, the Examiner suggests that if Applicants elect Group I or II, Applicants need to select one of the following species:

a) Film Forming Polymer: Applicants must elect a specific type of film forming polymer or mixture thereof as recited in claims 32-35;

b) Salt: Applicants must elect a specific type of salt (i.e. fatty acid or alkaline earth metal) and further define what the salt is as in claims 36-40;

c) Form: Applicants must further elect if the core is in the form of capsules, tablets, pellets, granules, mini tablets or micro pellets as recited in claims 45-55;

d) Type of Fumaric acid ester: Applicants must elect if the active ingredient is provided with surfactant or is free of surfactant. If surfactant is present, Applicant must choose a specific surfactant as in claims 58-59; and

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e) Type of Drug: Applicants must elect a specific type drug as recited in claims 60-61.

Applicants respectfully disagree with this requirement for further election of species. Applicants have already elected a species of separating agent that floats in pure water, a separating agent that sinks in pure water and a film-forming polymer to facilitate the search and examination of this application. As identified by the Examiner, each of the suggested groups of species a)-e) are related as a film forming polymer, a salt, a form, a type of fumaric acid ester and a type of drug. As such, each species in the identified groups relate to a single general inventive concept under PCT Rule 13.2 and no serious burden would be incurred by the Examiner in searching and examining the genera. In contrast, the prosecution of each of the disclosed species separately will pose a substantial economic burden on Applicants. Therefore, reconsideration of this species election is respectfully requested.

However, in an earnest effort to be completely responsive, Applicants have canceled claims 58 and 59 and hereby make the provisional election of the following species:

- a) Polyacrylate as Film Forming Polymer (see claims 34 and 35, and lines 27 to 30 on page 2 of the specification);
- b) Magnesium Stearate as Salt (see claim 38);

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c) Pellets as Form (see claim 45, 52 and 53); and
e) Metoprolol as Type of Drug (see claims 60 and 61),
with traverse.

Respectfully submitted,



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